

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
MEMPHIS DIVISION**

**LISA BROOKS,**

**Plaintiff,**

**V.**

**No.: 2:18-cv-02278-JPM**

**WESTLAKE SERVICES, LLC,**

**Defendant.**

**MOTION TO DISMISS, OR IN THE ALTERNATIVE,  
TO STAY LITIGATION AND COMPEL ARBITRATION**

COMES NOW Defendant, Westlake Services, LLC, by and through the undersigned counsel, pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure and the Federal Arbitration Act, 9 U.S.C. §1, *et seq.*, and files this Motion to Dismiss, or in the Alternative, to Stay Litigation and Compel Arbitration. In support of this motion, Defendant would show the following:

1. On October 18, 2016, Plaintiff executed a Retail Installment Contract and Security Agreement relating to the purchase of a vehicle with OB Auto, LLC. *See*, D.E. 19, Notice of Filing Contract Retail Installment Contract and Security Agreement by Westlake Financial Services, LLC (“Contract”). The Contract was assigned to Defendant.

2. Plaintiff filed this lawsuit alleging Defendant made calls to Plaintiff in an attempt to collect a debt in violation of the Telephone Consumer Protection Act (“TCPA”). *See*, D.E. 1, Complaint and Demand for Jury Trial (“Complaint”). The Complaint is related to phone calls Defendant allegedly made to Plaintiff in an attempt to collect a debt under the Contract. *See*,

Complaint.

3. Plaintiff's Contract contains an Arbitration Provision which provides as follows in relevant part:

You or we (including any assignee) may elect to resolve any Claim by neutral, binding arbitration and not by a court action. "*Claim*" means any claim, dispute or controversy between you and us or our employees, agents, successors, assigns, or affiliates arising from or relating to:

1. the credit application;
2. the purchase of the Property;
3. the condition of the Property;
4. this Contract;
5. any insurance, maintenance, service or other contracts you purchased in connections with this Contract; or
6. any related transaction, occurrence or relationship.

This includes any Claim based on common or constitutional law, contract, tort, statute, regulation, or other ground. To the extent allowed by law, the validity, scope, and interpretation of this arbitration provision are to be decided by neutral, binding arbitration.

*See*, Contract, p. 4.

4. The Arbitration Provisions further states: "You and we expressly agree that this arbitration provision is governed by the FAA to the exclusion of any different or inconsistent state law." *See*, Contract, p. 5.

5. The Federal Arbitration Act provides that "If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement..." 9 U.S.C. §3.

6. Pursuant to 9 U.S.C. §3, the Court should stay the instant litigation and order the

parties to proceed with arbitration in accordance with the parties' agreement.

7. A Memorandum in Support of Defendant's Motion Dismiss, or in the Alternative, to Stay Litigation and Compel Arbitration is submitted contemporaneously herewith.

WHEREFORE, PREMISES CONSIDERED, Defendant respectfully requests that the Court dismiss this lawsuit and so that Plaintiff's claims can be resolved in final and binding arbitration in accordance with the parties' Arbitration Agreement. In the alternative, Defendant respectfully requests that the judicial proceedings in this case be stayed pending the arbitration of Plaintiff's claims.

Respectfully submitted,

/s/Bertis Echols

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Attorneys for Westlake Financial Services, LLC

### **CERTIFICATE OF SERVICE**

The undersigned does hereby certify that the attached pleading has been served via the Court's ECF system on this 15<sup>th</sup> day of August, 2018, to:

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/s/Bertis Echols

Bertis Echols